

**Proposed Order**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.<sup>1</sup>

X

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: PROMESA

: Title III

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: Case No. 17-BK-3283 (LTS)

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: (Jointly Administered)

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X

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: PROMESA

: Title III

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: Case No. 17-BK-4780 (LTS)

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: **This filing relates only to  
Case No. 17-BK-4780 (LTS)**

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X

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY

Debtor.

**[PROPOSED] ORDER (I) SUSTAINING OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS' URGENT OBJECTIONS TO MAGISTRATE JUDGE'S AUGUST 2, 2019  
ORDER ON MOTION TO COMPEL, [AND (II) GRANTING ALTERNATIVE MOTION  
TO STRIKE AND EXCLUDE OUT-OF-SCOPE DECLARATION TESTIMONY AND  
RELATED EVIDENCE]**

<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Upon consideration of the *Official Committee of Unsecured Creditors' Urgent*

*(I) Objections to Magistrate Judge's August 2, 2019 Order on Motion to Compel, and*

*(II) Alternative Motion to Strike and to Exclude Out-Of-Scope Declaration Testimony and*

*Related Evidence* (the “Objections” and the “Motion to Strike”), the Court having reviewed the Objections and the Motion to Strike and the relief requested; the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 2166(a); the Court determining that venue of this proceeding and the Objections and the Motion to Strike in this District is proper under 28 U.S.C. § 1391(b) and 48 U.S.C. § 2167(a); notice of the Objections and the Motion to Strike being adequate and proper under the circumstances; and after due deliberation and sufficient cause appearing; therefore, it is hereby ORDERED that:

1. The Objections are SUSTAINED as set forth herein.

2. It is hereby ORDERED that the Government Parties,<sup>2</sup> the Ad Hoc Group, and Assured in responding to the Committee’s request are not entitled to assert a common interest privilege over documents or communications dated prior to the March 26, 2019 execution of the RSA Term Sheet.

3. It is hereby ORDERED that the FOMB add the following individuals as document custodians: (1) Jose B. Carrion III; (2) Andrew Biggs; (3) Carlos M. Garcia; (4) Arthur J. Gonzalez; (5) Ana J. Matosantos; and (6) Jose R. Gonzalez.

4. It is hereby ORDERED that Blue Mountain and Knighthead, two Ad Hoc Group member funds, produce responsive documents from the professional most involved in the negotiation and consideration of the RSA.

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<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Objections and the Motion to Strike.

5. It is hereby ORDERED that PREPA add as a custodian Todd Filsinger or whichever other representative of Filsinger Energy Partners has the most relevant documents responsive to the Committee's requests in his or her possession, custody, or control.

6. It is hereby ORDERED that the Government Parties shall provide complete productions of responsive, non-privileged documents in response to the following requests for discovery by the Committee:

- a. FOMB – First Document Requests Nos. 4, 8, 9, 10, 11, 12, 17, 18, 19, 25 and 26.
- b. AAFAF – First Document Requests Nos. 4, 8, 9, 10, 11, 12, 17, 18, 19, 25 and 26.
- c. PREPA – First Document Requests Nos. 4, 8, 9, 10, 11, 12, 17, 18, 19, 25 and 26.

7. It is hereby ordered that the Government Parties shall provide witnesses to testify on the following topics in response to the Committee's requests for 30(b)(6) testimony:

- a. FOMB – Topics 4, 6, 9, and 10
- b. AAFAF – Topics 4, 6, 9, and 10
- c. PREPA – Topics 4, 6, 10, and 11

8. It is hereby ORDERED that Assured produce loss reserve calculations and communications relating to such loss reserve calculations shared with New York regulators.

9. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this order.

**[In the alternative, to the extent the relief set forth in paragraphs 6 and 7 above is not granted, paragraphs 6 and 7 shall be replaced with the following:]**

10. The Motion to Strike is GRANTED.
11. The portions of the declarations of Natalie Jaresko, David Brownstein, and Christian Sobrino Vega, highlighted in Exhibit B of the Motion to Strike, are STRICKEN.
12. The declaration of Frederic Chapados is STRICKEN in its entirety.
13. No party may introduce into evidence in the litigation of the 9019 Motion the portions of the aforementioned declarations that have been stricken or any related evidence, including evidence concerning:
  - (i) the declarants' and the Government Parties' subjective motivations in entering into the settlement;
  - (ii) the extent to which the settlement relates to potential a plan of adjustment;
  - (iii) the effect of the settlement on the proposed transformation;
  - (iv) the effect of the settlement on the Puerto Rico economy and/or PREPA's ability to avoid a future Title III filing;
  - (v) the ability of PREPA's ratepayers to pay the surcharges contemplated by the RSA;
  - (vi) the likelihood that electricity rates will rise absent a settlement; and
  - (vii) the benefits of the settlement embodied by the RSA as compared to other settlements that the Government Parties considered but rejected.

Dated: \_\_\_\_\_  
New York, New York

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Hon. Laura Taylor Swain  
UNITED STATES DISTRICT JUDGE